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Proposed Counsel for Debtor

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

JERSEY ELECTRIC & SOLAR,

Debtor.

Case No.: 15-14394-led
Chapter 11

**MOTION FOR ENTRY OF ORDER
DETERMINING THAT ADEQUATE
ASSURANCE HAS BEEN PROVIDED
TO UTILITY COMPANIES AND
ESTABLISHING PROCEDURES FOR
DETERMINING REQUESTS OF
ADDITIONAL ADEQUATE
ASSURANCE**

Hearing Date: *OST Requested*
Hearing Time: *OST Requested*

Jersey Electric & Solar, a Nevada corporation (“Debtor”) the above-captioned debtor and debtor in possession, by and through its proposed counsel, Andersen Law Firm, Ltd. (“Andersen Law Firm”), hereby request entry of an order: (i) determining that the Debtor’s utility providers have been provided with adequate assurance of payment pursuant to Section 366; (ii) approving the Debtor’s proposed procedures by which the Debtor’s utility providers may request additional adequate



1 assurance; (iii) prohibiting the Debtor's utility providers from altering, refusing, or discontinuing
2 services; (iv) and additional related relief.¹

3 This Motion is supported by: the following Memorandum of Points and Authorities; the
4 Omnibus Declaration of Brian N. Geczi in Support of Debtor's Initial Emergency Motions and Related
5 Relief ("Geczi Declaration"), filed contemporaneously herewith; all papers and pleadings filed in the
6 above-captioned case, judicial notice of which is requested pursuant to Rule 201 of the Federal Rules
7 of Evidence; and any arguments of counsel offered in support of the Motion during any hearing held
8 on the Motion.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. Jurisdiction**

11 The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in
12 the District of Nevada is proper pursuant to 28 U.S.C. § 1409.

13 This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). If it is determined
14 that the Court cannot enter final orders or judgment in this core proceeding consistent with Article III
15 of the United States Constitution, the Association consents to the entry of final orders or judgment by
16 this Court.

17 The relief requested herein is premised on Sections 105(a) and 366.

18 **II. Statement of Facts**

19 The Debtor is a licensed and bonded electrical contracting company providing services to
20 customers throughout the Las Vegas Valley and the surrounding geographic area. The Debtor employs
21 approximately thirty employees and provides service to residential and commercial customers. The
22 Debtor performs work on everything from small, private homes to casinos located on the Las Vegas
23 Strip.

24
25 _____
26 ¹ When used herein, all references to "ECF No." are to the numbers assigned to the documents
27 filed in the case as they appear on the docket. All references to "Section" are to the provisions of the
Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRBP" are to the Federal Rules of
Bankruptcy Procedure. All references to "LR" are to the Local Rules of Bankruptcy Practice for the
United States District Court for the District of Nevada.

1 The Debtor filed its voluntary bankruptcy petition for bankruptcy relief on July 31, 2015,
2 thereby initiating the above-captioned bankruptcy case (“Chapter 11 Case”). Pursuant to Sections
3 1107(a) and 1108, the Debtor is authorized to and is operating business and property as a debtor in
4 possession.

5 Additional information regarding the Debtor, its business operations, its bankruptcy filing, and
6 the specific relief requested in this Motion is contained in the Geczi Declaration.

7 **III. Relief Requested**

8 The debtor incurs utility expenses for water, sewer service, electricity, waste management, and
9 telecommunications services. These utility services are provided by the various utilities (as such term
10 is used in Section 366, collectively, “Utility Providers”). A list of the Utility Providers is attached
11 hereto as **Exhibit 1**.

12 On average, the Debtor expends approximately \$4,000.00 on utilities provided by the Utility
13 Providers, depending on the season, with costs increasing during the summer months. As of the Petition
14 Date, the Debtor is current on its utility obligations.

15 The utility services provided by the Utility Providers are essential to the Debtor’s business
16 operations and, thus, to its reorganization efforts. The Debtor must have uninterrupted access to the
17 utilities, as any interruption of utility services, even for a brief period of time, would seriously interfere
18 with the Debtor’s ability to work on and complete projects on behalf of customers, thereby negatively
19 affecting the Debtor’s customer relationships, goodwill, revenues, and profits. Such an interruption
20 would harm the Debtor’s reorganization efforts and would negatively impact the Debtor’s value,
21 ultimately harming creditor recoveries. It is therefore critical that utility services continue
22 uninterrupted during the Debtor’s Chapter 11 Case.

23 The Debtor intends to make all post-petition payments to the Utility Providers in a timely
24 manner. The Debtor expects it will have access to funds sufficient to make these payments from its
25 ongoing business operations, and such funds constitute unencumbered cash. Given its long and positive
26 account history with the Utility Providers, the fact that the Debtor is current with all of its obligations
27 to the Utility Providers, and the relatively small monthly obligations owed to the Utility Providers, the

Debtor asserts there is no need to provide any additional assurance of payment for utility services for future services to the Utility Providers, including those Utility Providers that did not hold deposits from the Debtor as of the Petition Date (“Proposed Adequate Assurance”).

Notwithstanding the Proposed Adequate Assurance for the Utility Providers, if the Utility Providers are dissatisfied with the Proposed Adequate Assurance, the Debtor proposes the following procedures (“Procedures”) under which such Utility Providers may make additional requests for adequate assurance:

- (a) If a Utility Provider is dissatisfied with the Proposed Adequate Assurance, the Utility Provider must serve a detailed written request (“Request”) so that it is actually received within fourteen (14) days of the date of the order granting this Motion (“Request Deadline”) stating additional protections it believes are necessary and appropriate under the circumstances.
- (b) Without further order of the Court, the Debtor may enter into agreements granting additional or different adequate assurance to a Utility Provider that serves a timely Request if the Debtor, in its discretion, determines that the Request is reasonable or if the parties negotiate alternate consensual provisions.
- (c) If the Debtor believes that a Request is unreasonable or if no alternative consensual provisions can be agreed to, the Debtor will file a motion pursuant to Section 366(c) (a “Determination Motion”) within fourteen (14) days after the Request Deadline. The Determination Motion will seek a determination from the Court that the Utility Deposit account, plus any additional consideration offered by the Debtor, constitutes adequate assurance of payment. Pending notice and a hearing of the Determination Motion, the Utility Provider that is the subject of the Determination Motion may not alter, refuse or discontinue services to the Debtor, or recover or set off against a prepetition deposit.
- (d) Any Utility Provider that fails to make a timely Request will be deemed to be satisfied that the Debtor’s Proposed Adequate Assurance provides adequate assurance of payment to such Utility Provider within the meaning of Section 366, and will further be deemed to have waived any right to seek additional adequate assurance during the course of this Chapter 11 Case.

The Debtor further requests that the Utility Providers be prohibited from altering, refusing, or discontinuing utility services to the Debtor absent further order of the Court.

IV. Legal Authority

Section 366 protects a bankruptcy debtor against immediate termination of utility services after commencing its case. Pursuant to Section 366, a utility may not, during the first twenty days of the case, alter, refuse, or discontinue service to a debtor in a Chapter 11 case solely because of unpaid prepetition amounts, but the utility may do so after such time period unless the debtor furnishes “adequate assurance” of payment, in the form of a deposit, or for post-petition services in a form “satisfactory” to the utility. Furthermore, under Section 366(c) in determining whether an assurance of payment is adequate, the Court may not consider (i) the absence of security before the petition date, (ii) the debtor’s history of timely payments, or (iii) the availability of an administrative expense priority.

In determining what is adequate, Courts have long recognized that adequate assurance does not constitute an absolute guarantee of payment. *See In re Steinebach*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) (“Adequate assurance of payment is not, however, absolute assurance . . . a Bankruptcy Court is not required to give a [Utility Provider] the equivalent of a guarantee of payment, but must only determine that the utility is not subject to any unreasonable risk of non-payment for postpetition services.”) (citing *In re Adelphia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (S.D.N.Y. 2002)). Courts have recognized that, in analyzing the requisite level of adequate assurance, they should “focus upon the need of the utility for assurance, and to require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. & Power Co. v. Caldor, Inc.-NY*, 117 F.3d 646, 650 (2d Cir. 1997) (citing *In re Penn Jersey Com.*, 72 B.R. 981 (Bankr. E.D. Pa. 1987)).

The Debtor seeks to mitigate the Utility Provider’s risk of non-payment, while maintaining adequate capital to operate its business during its Chapter 11 Case. Under the circumstances of this case, the Debtor believes the establishment of the Procedures and compliance therewith, relative to the Debtor’s estimated monthly utility consumption, which is not considerable, constitutes adequate assurance of payment within the meaning of Section 366(c) of the Bankruptcy Code. The Debtor proposes to protect the Utility Providers further by establishing a reasonable procedure for the Utility



1 Providers to request additional adequate assurance of payment. Indeed, separate negotiations with each
2 of the Utility Providers would be inefficient and unnecessarily divert the Debtor from other critical
3 tasks related to the operation of its business and restructuring. If the Debtor fails to reach an early
4 agreement with each Utility Provider, it would have to file motions seeking expedited determinations
5 as to adequate assurance or risk service termination.

6 The proposed Procedures therefore provide the Utility Providers with adequate assurance of
7 payment and ensure continued utility services, while providing a prompt forum for the resolution of
8 any dispute as to such adequate assurance. Section 105(a) of the Bankruptcy Code authorizes the
9 Bankruptcy Court to enter “any order . . . that is necessary or appropriate to carry out the provisions of
10 this title.” 11 U.S.C. § 105(a). Because the proposed Procedures protect both the Debtor and the Utility
11 Providers, they carry out the provisions of Section 366 and therefore are appropriate under Section
12 105(a).

13 **V. Reservation of Rights**

14 Nothing contained in this Motion is intended or should be construed as an admission as to the
15 validity of any claim against the Debtor, a waiver of the Debtor’s rights to dispute any claim, or an
16 approval or assumption of any agreement, contract, or lease under Section 365. The Debtor expressly
17 reserves its rights to contest any invoice of a Utility Provider under applicable bankruptcy or non-
18 bankruptcy law. Likewise, if this Court grants the relief sought herein, any payment made pursuant to
19 the Court’s order is not intended and should not be construed as an admission as to the validity of any
20 claim or a waiver of the Debtor’s rights to dispute such claim subsequent to entry of such order.

21 **VI. Conclusion**

22 For all the foregoing reasons, the Debtor respectfully requests the Court grant the relief
23 requested herein and enter an order, substantially in the form of order attached hereto as **Exhibit 2**: (i)
24 granting the Motion; (ii) determining that the Utility Providers have been provided with adequate
25 assurance of payment pursuant to Section 366; (iii) approving the Procedures by which the Utility
26 Providers may request additional adequate assurance; (iv) prohibiting the Utility Providers from
27 altering, refusing, or discontinuing services; (v) determining that the Debtor is not required to provide

1 any adequate assurance beyond what is proposed in this Motion; and (vi) granting the Debtor such
2 additional relief as the Court deems appropriate under the circumstances.

3 Dated this 31st day of July, 2015.

4 Respectfully submitted by:

5 **ANDERSEN LAW FIRM, LTD.**

6 By: /s/ Ryan A. Andersen
7 Ryan A. Andersen, Esq.
8 Nevada Bar No. 12321
9 101 Convention Center Drive
10 Suite 600
11 Las Vegas, Nevada 89109

12 *Proposed Counsel for Debtor*



EXHIBIT 1**Account Numbers and Utility Providers**

Utility Provider	Address	Account Number(s)
Nevada Energy	P.O. Box 98910, Las Vegas, NV 89154-0001	xxxxxx3292
Republic Services	P.O. Box 98508, Las Vegas, NV 89193-8508	xxxxxx8416
Las Vegas Valley Water District	1001 S. Valley View Blvd., Las Vegas, NV 89153	xxxxxx2712
Clark County Water Reclamation District	5857 E. Flamingo Road, Las Vegas, NV 89122	xxxxxx10000
CenturyLink	4850 South Fort Apache Road, Las Vegas, NV 89147	xxxx6026 and xxxx9306



EXHIBIT 2

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PROPOSED ORDER

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Proposed Counsel for Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

JERSEY ELECTRIC & SOLAR,

Debtor.

Case No.: 15-14394-led
Chapter 11

**ORDER DETERMINING THAT
ADEQUATE ASSURANCE HAS BEEN
PROVIDED TO UTILITY
COMPANIES AND ESTABLISHING
PROCEDURES FOR DETERMINING
REQUESTS OF ADDITIONAL
ADEQUATE ASSURANCE**

Hearing Date:
Hearing Time:

The Court, having considered the *Motion for Entry of Order Determining that Adequate Assurance Has Been Provided to Utility Companies and Establishing Procedures for Determining Requests of Additional Adequate Assurance* (“Motion”) at ECF No. ____; having conducted a hearing



1 with respect to the Motion on August ____, 2015, at ____ p.m. Pacific time; with Ryan A. Andersen,
 2 Esq. of the Andersen Law Firm appearing on behalf of the Debtor and with other appearances as noted
 3 on the record of such hearing; and having stated its findings of fact and conclusions of law on the record
 4 at the conclusion of such hearing, pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure,
 5 made applicable to this contested matter by Rule 9014 of the Federal Rules of Bankruptcy Procedure,
 6 such findings of facts and conclusions of law therefore being incorporated as if set forth herein:

7 **NOW THEREFORE**, good cause appearing, the Court **ORDERS** as follows:

8 **IT IS ORDERED** that the Motion is **GRANTED**;

9 **IT IS FURTHER ORDERED** that, except in accordance with the procedures set forth below,
 10 absent further order of the Court, the Debtor's utilities (as such term is used in section 366 of the
 11 Bankruptcy Code, collectively, the "Utility Providers") are prohibited from: (i) altering, refusing, or
 12 discontinuing service to, or discriminating against the Debtor solely on the basis of the commencement
 13 of its bankruptcy case or on account of any unpaid invoice for services provided before the Petition
 14 Date, and (ii) requiring the payment of a deposit or other security in connection with the Utility
 15 Providers' continued provision of utility services, including the furnishing of gas, heat, electricity,
 16 water, telephone service, or any other utility of like kind, to the Debtor;

17 **IT IS FURTHER ORDERED** that the following procedures will govern any additional
 18 requests for adequate assurance the Utility Providers may decide to make:

- 19 (a) If a Utility Provider is dissatisfied with the Proposed Adequate Assurance, the
 20 Utility Provider must serve a detailed written request ("Request") so that it is
 21 actually received within fourteen (14) days of the date of the order granting this
 22 Motion ("Request Deadline") stating additional protections it believes are
 23 necessary and appropriate under the circumstances.
- 24 (b) Without further order of the Court, the Debtor may enter into agreements
 25 granting additional or different adequate assurance to a Utility Provider that
 26 serves a timely Request if the Debtor, in its discretion, determines that the
 27 Request is reasonable or if the parties negotiate alternate consensual provisions.
- (c) If the Debtor believes that a Request is unreasonable or if no alternative
 consensual provisions can be agreed to, the Debtor will file a motion pursuant
 to Section 366(c) (a "Determination Motion") within fourteen (14) days after
 the Request Deadline. The Determination Motion will seek a determination

from the Court that the Utility Deposit account, plus any additional consideration offered by the Debtor, constitutes adequate assurance of payment. Pending notice and a hearing of the Determination Motion, the Utility Provider that is the subject of the Determination Motion may not alter, refuse or discontinue services to the Debtor, or recover or set off against a prepetition deposit;

- (d) Any Utility Provider that fails to make a timely Request will be deemed to be satisfied that the Debtor's Proposed Adequate Assurance provides adequate assurance of payment to such Utility Provider within the meaning of Section 366, and will further be deemed to have waived any right to seek additional adequate assurance during the course of this Chapter 11 Case.

IT IS FURTHER ORDERED that nothing in this order or the Motion will be deemed to vacate or modify any other restrictions on the termination of service by a Utility Provider as provided by sections 362 and 366 of the Bankruptcy Code or other applicable law, and nothing herein or in the Motion will constitute a post-petition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code nor will anything herein be deemed a waiver by the Debtor or any other party of any right with respect to the assumption or rejection of an executory contract;

IT IS FURTHER ORDERED that, notwithstanding the possible applicability of Bankruptcy Rules 6004(h), this Order is effective and enforceable immediately upon its entry; and

IT IS FURTHER ORDERED that this Court retains continuing and exclusive jurisdiction to the maximum possible extent to interpret, implement, and enforce this Order and all matters arising from or related to its implementation.

Respectfully submitted by:

ANDERSEN LAW FIRM, LTD.

By: /s/ Ryan A. Andersen
 Ryan A. Andersen, Esq.
 Nevada Bar No. 12321
 101 Convention Center Drive
 Suite 600
 Las Vegas, Nevada 89109

Proposed Counsel for Debtor

LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that:

- ☐ The court has waived the requirement set forth in LR 9021(b)(1).
- ☒ No party appeared at the hearing or filed an objection to the motion.
- ☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Counsel appearing:

Trustee appearing:

Debtor(s) appearing:

- ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ____ day of August, 2015.

By: /s/ Ryan A. Andersen
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Nevada Bar No. 12321
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Proposed Counsel for Debtor

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